

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 4672 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

PRECEDENT
BENEFIT DECISION
No. P-B-352

In the Matter of:

EUGENE E. COHEN
S.S.A. No. !

FORMERLY BENEFIT DECISION No. 4672
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The above-named claimant, on November 8, 1946, appealed from the decision of a Referee (R-16127-44759-46) which held that the claimant was not entitled to an increase in his weekly benefit amount under the provisions of Section 54 /now section 1280/ of the Unemployment Insurance Act. The claim for benefits was filed on July 5, 1946, in the Los Angeles office of the Department of Employment.

Based on the record before us, our statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

On July 5, 1946, the claimant registered for work and filed a claim for benefits in the Los Angeles office of the Department of Employment. A determination was issued by the Department establishing a maximum benefit award of \$176, at a weekly rate of eleven dollars. On July 19, 1946, the claimant filed an affidavit of earnings and requested a re-determination of his award on the ground that certain wages had been omitted in computing his award. An amended initial determination affirmed the original award. The claimant appealed and a Referee affirmed the amended determination.

The claimant worked for a single employer during his base period. Records of the Department of Employment indicate that this employer reported wages paid to the claimant during his base period as follows:

<u>DATES</u>	<u>AMOUNTS</u>
From April 1 to June 30, 1945.....	\$107.54
From July 1 to September 30, 1945.....	55.74
From October 1 to December 31, 1945.....	204.02
From January 1 to March 31, 1946.....	206.81
	<u>\$574.11</u>

At the hearing before a Referee, the claimant testified that wages in the amount of \$109.80 for the last two weeks of December, 1945, were omitted from the Department's determination of earnings for the quarter-year ending December 31, 1945. The claimant submitted pay check stubs showing wages earned during the quarters of his base period as outlined below:

<u>DATES</u>	<u>AMOUNTS</u>
From April 1 to June 30, 1945.....	\$107.54
From July 1 to September 30, 1945.....	30.61
From October 1 to December 31, 1945.....	313.82
From January 1 to March 31, 1946.....	127.17
	<u>\$579.11</u>

The claimant contends that wages earned during the last two weeks of December, 1945, in the amount of \$109.80 should be included in earnings for the quarter ending December 31, 1945, instead of the following quarter, when the amount was paid. If his contention is correct, he would be entitled to an increase in his weekly benefit amount, and in his total award.

In his letter of appeal to a Referee, the claimant states in part, "(1) Insurance paid based on amount earned, (2) Salary and commission cannot be computed until after close of business period in which amount was earned." In this appeal, the claimant also refers to a previous Referee's decision (R-4159-26238-45) dated September 24, 1945, which he contends involved a similar appeal which was decided in his favor. An examination of the above-mentioned decision discloses that the claimant's appeal was based on the same ground as in the instant case, and involved the December quarter of a base period from April 1, 1944, through March, 1945. The decision referred to by the claimant shows that the base period employer was the same and that the employer paid wages accruing from the first to the fifteenth of a month on the twentieth of that month, and wages earned from the fifteenth to the last day of the month on the fifth day of the following month. There is no evidence in the instant case that the employer has altered this

procedure and the claimant testified, "Every two weeks we are paid as of the fifteenth and as of the first."

REASON FOR DECISION

Effective September 15, 1945, Section 54 now section 12807 of the California Unemployment Insurance Act was amended to read:

"An individual's weekly benefit amount shall be the amount appearing in column 'B' in the table set forth in this Section on the line on which in column 'A' of such table there appears the wage bracket containing the amount of wages paid to such individual for employment by employers during the quarter of his base period in which such wages were the highest." (Emphasis added)

Previously, and during the claimant's prior appeal under similar circumstances, the underscored portion of the above-quoted section read "wages earned by", so that the benefit amount previously was determined by the amount of wages earned, rather than by the amount paid.

Although the claimant in this case earned \$109.80 during the last two weeks of the December quarter of his base period, the amount was not paid to him until the following month, in the following quarter. The claimant's benefit award must be based upon the amount of wages paid, rather than the amount earned.

Amounts not actually delivered to a claimant may be considered wages paid if the amounts have been set aside so that the claimant can draw upon them at any time (Regulation 60 now Regulation 926-17, Title 22, California Administrative Code) or if the amounts remain unpaid within the time limits set forth in the Labor Code. (Sections 53, 54 now sections 1280 and 12817, Unemployment Insurance Act; Sections 201, 202, 204, Labor Code; Regulation 73 (c)(1) now Regulation 1088-37, Title 22, California Administrative Code). However the claimant has not contended that the facts of his case fall within these exceptions, nor is there any evidence to that effect. Accordingly we hold that the claimant is not entitled to an increase in his award by virtue of wages earned in December, 1945, but not paid until January, 1946.

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DECISION

The decision of the Referee is affirmed. The claimant is not entitled to an increase in his benefit award.

Sacramento, California, January 22, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

HIRAM W. JOHNSON, 3rd

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 4672 is hereby designated as Precedent Decision No. P-B-352.

Sacramento, California, June 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING OPINION

I dissent.

The rationale expressed in the proposed decision may be valid.

I recognize the authority granted this Board by the enactment of section 409. I do not believe, however, that such section should be construed as a blanket authority to memorialize cases which are outdated, archaic, and related to sections of the act and regulations, most of which have been amended repeatedly.

Viewing the instant case in light of the statutory requirements today, the issues would be moot. Assuming for the sake of argument that the issue itself may again be presented, the circumstances can be reviewed and a conclusion reached based upon wages and earnings consonant with today's society and economics.

I therefore oppose the proposed elevation of the instant case to precedent status.

CARL A. BRITSCHGI